

the confidentiality of the information, then the § 20.2 provisions on disclosure and use of proprietary information do not apply. AT&T's proposed § 20.2.4(iv) provides that if the receiving party has no reasonable basis on which to inquire whether or not such information was subject to a confidentiality agreement at the time such information was required then § 20.2 provisions do not apply. The Panel finds AT&T's proposed § 20.2.4(iv) is more reasonable since it addresses whether there is any duty in the first place for a receiving party to inquire whether the information obtained from a third party was proprietary in nature. Ameritech's proposed § 20.2.4(iv), on the other hand, requires specific action, namely to exercise commercially reasonable efforts to determine whether the third person had any obligation to protect the confidentiality of the information.

ISSUE 39

Whether a three- or five-year term should be included in the Agreement approved by the Commission? Whether the Commission or the Dispute Resolution Process should be invoked to resolve disputes regarding a future contract?

DECISION:

The Panel finds that the Agreement should be for a three-year term. The Panel further finds that disputes regarding the terms of a future agreement should be brought to this Commission. Therefore, the Panel finds that Ameritech's proposed Agreement language in §§ 21.1 and 21.2 should be adopted.

REASONS FOR DECISION:

As Ameritech has proposed, a three-year term, at least to this initial contract, is better suited to the volatility of the local exchange marketplace. In addition, Ameritech's proposed contract

language allowing the Commission to resolve disputes regarding a new Agreement should be adopted.

ISSUE 40

Whether Ameritech's proposed language for Article XXIV regarding non-severability of the rates, terms and conditions of the Agreement should be adopted?

DECISION:

Ameritech's proposed language making the rates, terms and conditions of the Agreement non-severable should not be adopted.

REASONS FOR DECISION:

The Panel finds that Ameritech's proposed addition to Article XXIV making the rates, terms and conditions of the Agreement non-severable should not be adopted since the Agreement contains a significant number of issues which may become involved in legal disputes. As indicated in the History of Proceedings section of this Decision of the Arbitration Panel, a stay has already been issued concerning certain FCC rules approved in the FCC Order. Making the rates, terms and conditions of the Agreement non-severable might well render the whole Agreement null and void. While hopefully this arbitrated Agreement may withstand legal challenge, this is by no means certain. Therefore, the Panel finds that it would not be appropriate under the circumstances to make the rates, terms and conditions of this Agreement to be non-severable.

ISSUE 41

Whether Ameritech's or AT&T's Agreement § 25.1(a) concerning indemnity rights should be adopted?

DECISION:

AT&T's Agreement § 25.1(a) concerning indemnity rights should be adopted.

REASONS FOR DECISION:

AT&T's proposed § 25.1(a) should be adopted since it makes it clear that the indemnification is limited to negligence or willful misconduct occurring during the scope of employment. Thus, AT&T's proposed § 25.1(a) makes it clear that indemnification would not occur for incidents taking place outside the scope of employment.

ISSUE 42

Whether AT&T's proposed additional language for § 12.7 concerning indemnification for losses related to interconnection with other collocated carriers should be adopted?

DECISION:

AT&T's proposed additional language for § 12.7 concerning indemnification should be adopted.

REASONS FOR DECISION:

In the absence of AT&T's proposed additional language for § 12.7 concerning interconnection with other collocated carriers, Ameritech conceivably could seek indemnification from AT&T for losses resulting from actions or inactions by other collocated carriers in situations where AT&T and other carriers are interconnected with Ameritech. In such a situation it is only reasonable and fair that AT&T's indemnification should be limited to AT&T's actions and/or inactions. Ameritech is certainly capable of pursuing any remedies against other collocating carriers for any losses that may occur as a result of the actions or inactions of these carriers.

ISSUE 43

Whether Ameritech's or AT&T's Agreement Article XXVI concerning limitation of liability should be adopted?

DECISION:

Ameritech's Article XXVI concerning limitations of liability should be adopted.

REASONS FOR DECISION:

While AT&T has indicated an intention to protect Ameritech from claims brought by AT&T's customers, AT&T's proposed language does not clearly accomplish this result. AT&T's Agreement § 26.4 provides for tariff and contract provisions protecting the party filing the tariff or making the contract and "its agents, contractors or other persons retained by such parties." Therefore, this language does not demonstrate that Ameritech would be within the scope of this protected group with respect to contracts between AT&T and AT&T's end-user customers.

Tariff provisions limiting the liability of telecommunications companies have long been commonplace and remain so at the present time. For example, Ameritech's tariffs limit liability to an amount not in excess of the carrier's charge for the affected service during the affected period plus certain abatements and allowances for interruption. Also, these tariff provisions do not exclude personal injury and property damage claims.

The cost studies which were used to develop Ameritech's proposed rates assume the liability limits contained in Ameritech's current tariff. Higher costs would result if these limits were rendered inapplicable to AT&T's customers. Furthermore, many of AT&T's customers will be former customers of Ameritech who had previously been subject to tariff provisions limiting Ameritech's

liability. Ameritech's liability exposure to an end-user who is a former Ameritech customer should not be increased merely because the end-user chooses to take service from a competing carrier rather than Ameritech.

AT&T claims there may be situations in which AT&T's liability will not be limited or where the tariff provisions limiting liability will not be honored. AT&T also claims that there is uncertainty as to how the law concerning liability limitations will evolve over the terms of the agreement. AT&T also claims that the extent tariff limitations concerning liability may be enforced is not clear.

Since what will happen in the future concerning liability limitations is unknown, the Panel finds it should make its determination on the issue of liability limitation based on the existing situation rather than speculate as to what may happen in the future. While the Panel finds that when true competition exists in the local service arena, limitations of liability may not be appropriate, true competition in local service does not exist today. To place AT&T's customers in a more favorable position than Ameritech customers over the issue of limitation of liability would be neither appropriate nor fair at the present time.

AT&T and Ameritech also differ over the issue of limitation of damages. Ameritech's proposed Agreement § 26.3 limits liability to

"the total amount that is or would have been charged to the other party by such negligent or breaching party for the service(s) or function(s) not performed or improperly performed."

AT&T's proposed § 26.3.1(a) would cap Ameritech's liability at the greater of:

"(i) the total amount that is or would have been charged to AT&T for the service or function not performed or improperly performed and (ii) the amount Ameritech would have been liable to its Customer if the Resale Service was provided directly to its Customer. . . ."

The Panel finds Ameritech's Agreement § 26.3 to be the more reasonable provision concerning limitations of damages. Again AT&T's proposal would place its end-users in a more advantageous position than Ameritech's end-users. This is neither appropriate nor fair.

Ameritech proposes at Agreement § 26.5 that neither party should be liable to the other for consequential damages. AT&T proposes to amend this section so as to allow consequential damages where a party is liable for willful or intentional misconduct (including gross negligence). While in the future when there is true local competition, AT&T's amended § 26.5 might be appropriate, the Panel finds that Ameritech's § 26.5 should be adopted since it is in accord with existing tariff limitations preventing consequential damages.

ISSUE 44

Whether Ameritech's proposed § 6.5.2 to the Agreement limiting liability for losses for services rendered under Article VI of the Agreement should be adopted?

DECISION:

Ameritech's proposed § 6.5.2 which would limit liability for losses for services rendered under Article VI of the Agreement to \$10,000 for any one month period should be rejected.

REASONS FOR DECISION:

Ameritech has presented no justifiable reason under the Act, or the FCC's Order or the MTA or otherwise for adopting this proposed limitation on liability. Therefore, the Panel finds Ameritech's proposed § 6.5.2 should not be adopted.

ISSUE 45

Whether the Agreement should include an alternate dispute resolution mechanism for handling

disputes?

DECISION:

The Agreement should include an alternate dispute resolution mechanism as proposed by AT&T. Therefore, the Panel finds that AT&T's proposed §§ 28.3.2 and 1.5(b)(3) and proposed Schedule 28.3.2 should be included in the Interconnection Agreement. In addition, AT&T's proposed language for §§ 28.2.4 and 28.3 should be included in the Interconnection Agreement.

REASONS FOR DECISION:

Both parties have agreed to a "dispute escalation and resolution" procedure in which designated representatives of management will meet to attempt good faith settlement of disputes. The parties, however, disagree over the process which is to be followed in the event that these management representatives are unable to reach settlement of disputes.

AT&T proposes that in such instance, disputes should be submitted to arbitrators and be arbitrated pursuant to the American Arbitration Association rules. After an arbitrator's decision is rendered, AT&T's proposal provides that either party can appeal this decision to this Commission or to the FCC provided the matter was within the jurisdiction of the Commission or FCC and the Commission or the FCC agree to hear the matter. AT&T's proposal further provides that during such an appeal to the Commission or the FCC, the parties are to comply with the decision of the arbitrator. Ameritech proposes, on the other hand, that when the parties are unable to settle disputes by themselves, these disputes should be appealed to the Commission or the FCC and then be disposed of according to the rules, guidelines or regulations of the Commission or the FCC.

While the Panel considers that there is some merit to Ameritech's proposal to appeal disputed

issues directly to this Commission in view of this Commission's expertise in the matter, the Panel notes that there well may be numerous such contested disputes between various telecommunication businesses. In view of the significant downsizing of the Commission, and in particular, of its Telecommunications Division and its Administrative Law Judge Division, the Panel is concerned over the Commission's present capability to handle such disputes. Use of outside arbitrators, as proposed by AT&T, would alleviate this concern.

The Panel agrees with AT&T's proposal that the decision of the arbitrator should be put into effect immediately after the arbitrator's decision even if there is an appeal of the arbitrator's decision. The Panel finds that this would serve to avoid unnecessary appeals and would serve to assure that the Interconnection Agreement is being fully carried out. However, if necessary, and in an appropriate case, the Commission or the FCC could grant a stay on the imposition of the arbitrator's decision if such a stay were warranted.

ISSUE 46

Whether AT&T's additional proposed language for § 24.1 of the Agreement should be adopted?

DECISION:

The Panel finds that AT&T's proposed additional language for § 24.1 should not be adopted.

REASONS FOR DECISION:

AT&T proposes at § 24.1 of the Agreement that where a provision of the Agreement is held to be illegal, invalid or unenforceable, and the parties are after 30 days unable to reach agreement on replacement language for such a provision, the dispute is to be resolved by a dispute resolution

process provided for in the Agreement. The Panel finds that while this dispute resolution process may be appropriate for fleshing out details concerning this Agreement, the alternative dispute resolution process is not appropriate for rewriting any provisions of the Agreement which may be determined to be illegal, invalid or unenforceable. Allowing for outside arbitrators to rewrite such provisions would remove the impetus for the parties to negotiate a solution. Additionally, allowing for outside arbitrators to rewrite such provisions would serve to bypass the involvement of this Commission and/or the FCC on potentially significant policy matters.

ISSUE 47

In the event that this Commission or the FCC rejects any portion of the Agreement and the parties after 30 days are unable to renegotiate new terms, should the dispute be referred to the dispute resolution process established in this decision as proposed by AT&T in its additional proposed language for § 29.1 of the Agreement?

DECISION:

The Panel finds that if the Commission or the FCC rejects any portion of the Agreement, the dispute should not be referred to the dispute resolution process established in this decision. Therefore, the Panel finds that AT&T's proposed addition language for § 29.1 concerning the handling of rejected provisions of the Agreement should not be adopted.

REASONS FOR DECISION:

While the Panel finds that the dispute resolution process approved in this Agreement should be utilized to flesh out the details of the Agreement, the dispute resolution process should not be used to rewrite or replace any provision of the Agreement rejected by this Commission or by the FCC.

Such a revision should be handled by the parties and, if necessary, be mediated or arbitrated by this Commission or the FCC.

ISSUE 48

In the event the parties are unable to agree upon provisions of an Ameritech/AT&T interconnection tariff, should the dispute resolution process be used to establish such tariff provisions as recommended by AT&T's additional proposed language for § 29.2 of the Agreement?

DECISION:

The Panel finds that if the parties are unable to agree upon any provisions of an Ameritech/AT&T interconnection tariff the dispute resolution process should be used to establish such tariff provisions. Therefore, the Panel finds that AT&T's proposed additional language for § 29.2 concerning use of dispute resolution process to determine tariffs provisions should be adopted.

REASONS FOR DECISION:

If the parties are unable to reach agreement concerning certain provisions of the Ameritech/AT&T interconnection tariff it would be appropriate to utilize the Agreement's dispute resolution process to determine such tariff provisions. Such action would be within the concept of fleshing out the details of the Agreement and would therefore constitute a proper use of the Agreement's dispute resolution process.

ISSUE 49

In the event that proxy rates are established in this proceeding and rates are later adjusted by the FCC or this Commission, what will be the effective date for the new rates? In the event that rates are changed due to revisions to the Act or FCC rules, what will be the effective date for the new

rates?

DECISION:

The Panel finds that the Agreement language proposed by AT&T at §§ 29.3 and 29.5 should be adopted.

REASONS FOR DECISION:

The Panel's decision on this matter is based on the assumption that default proxies are reinstituted upon further Court review of the FCC's Order. The FCC Order requires states that set prices upon the default proxies to update the prices in the Interconnection Agreement on a going-forward basis, either after the state conducts or approves an economic study according to the cost-based pricing methodology or pursuant to any revisions of the default proxy. There is absolutely no mention or basis in the FCC Order for Ameritech's conclusion that new rates established by either the FCC or this Commission be applied retroactively as to the effective date of this Interconnection Agreement. At ¶ 693 of the FCC's Order, the FCC indicates that states must replace interim rates set in arbitration proceedings with the permanent rate resulting from separate rulemakings and concludes that the permanent rate will take effect at or about the time of other conclusions of the separate rulemaking and will apply from that time forward. Similarly, automatic retroactive application of rate alterations due to changes in the Act or FCC rules is not appropriate.

ISSUE 50

If any final and nonappealable legislative, regulatory, judicial or other legal action other than an amendment to the Act materially affects the ability of a party to perform any material obligation under the Act and the parties are unable to negotiate a new provision or provisions within 30 days

should this dispute be referred to the Agreement's dispute resolution process as recommended by AT&T's proposed additional language for § 29.4 of the Agreement?

DECISION:

The Panel finds that if legislative, regulatory, judicial or other legal action materially affects the ability of a party to perform any material obligation under the Act and the parties are unable to negotiate a new provision or provision within 30 days, the dispute should not be referred to the Agreement's dispute resolution process. Therefore, the Panel finds that AT&T's proposed addition to § 29.4 of the Agreement should not be adopted.

REASONS FOR DECISION:

The dispute resolution process should not be used to resolve difficulties resulting from legislative, regulatory, judicial or other legal action. Such action is not part of the process of fleshing out details of the Agreement which would be an appropriate use of the dispute resolution process.

ISSUE 51

Whether all of the benefits provided under this Agreement to AT&T and Ameritech should be provided to their affiliates if Ameritech or AT&T desire to conduct their respective business operations through affiliates?

DECISION:

The Panel finds that all of the benefits provided under the Agreement should not be provided to AT&T's or Ameritech's affiliates if AT&T or Ameritech have obligations under the Agreement performed by their affiliates.

REASONS FOR DECISION:

At § 30.2 of the Agreement, the parties agree to allow obligations under the Agreement to be performed by an affiliate or affiliates. AT&T proposes that if affiliates are used these affiliates should receive all of the benefits of the Agreement. The Panel finds that it is one matter to allow obligations under the Agreement to be performed by affiliates, it is, however, quite another matter to state these affiliates should then have all of the rights of Ameritech or AT&T under the Agreement. Furthermore, AT&T's proposed provision does not indicate whether these affiliates would be performing all of the obligations under the Agreement or only part of the obligations. If affiliates perform only part of the obligations under the Agreement they clearly should not be entitled to receive all of the benefits of the Agreement.

ISSUE 52

Whose proposed Agreement language should be adopted concerning the administration of gross receipts taxes?

DECISION:

The Panel finds that the Agreement language proposed by AT&T at § 30.7 should be adopted.

REASONS FOR DECISION:

The Panel finds that Ameritech language proposed by Ameritech at § 30.7 is vague. Taxes are either applicable or not, there is no option. On the other hand, AT&T's language is clear, direct and to the point and therefore should be adopted.

ISSUE 53

Whether AT&T's proposed additional language set forth at § 30.11 of the Agreement should

be adopted? This additional language would prevent Ameritech from representing in advertising and marketing that Ameritech is providing services to AT&T or that AT&T is reselling Ameritech's services.

DECISION:

AT&T's additional language concerning Publicity and Use of Trademarks or Service Marks set forth at § 30.11, which prevents Ameritech from advertising or marketing that Ameritech is providing service to AT&T or that AT&T is reselling Ameritech's service, should be included in the Agreement.

REASONS FOR DECISION:

The purpose of the Act, the FCC's Order and the MTA is to assure that competition develops throughout the telecommunications arena. If Ameritech is allowed to claim in its advertising and marketing that when parties receive service from AT&T they are really receiving it from Ameritech this will undermine efforts to develop competition. Therefore, it is reasonable to restrict Ameritech's marketing and advertising from claiming that AT&T's service is really service provided by Ameritech.

ISSUE 54

Should the Agreement permit AT&T to obtain any interconnection service or network element which is made available to any other party by Ameritech?

DECISION:

The Panel finds that the Agreement should permit AT&T to obtain any interconnection service or network element Ameritech makes available to any other party. Therefore, the Panel finds that AT&T's Agreement language at § 30.13 should be adopted?

REASONS FOR DECISION:

Section 252(I) of the Act expressly requires a local exchange carrier to make available any interconnection or service or network element provided under an agreement approved under § 252 to other requesting telecommunication carriers upon the same terms and conditions as those provided in the Agreement. The availability of interconnection, unbundled access, resale and collocation must also be provided on a nondiscriminatory basis according to the Act (§§ 251(2), 251(3), 251(4), and 251(6)). Section 355(1) of the MTA [MCL 484.2355(1)] requires that unbundled network elements be available "to other providers to purchase such services on a nondiscriminatory basis." Section 357(1) of the MTA [MCL 484.2357(1)] states, "A provider of local exchange service shall make available for resale on nondiscriminatory terms and conditions all basic local exchange services. . ." The FCC's rule in regard to § 252(I) (47 C.F.R. § 51.809) has been stayed by the recent court action. The Panel, however, finds that the proposed language of AT&T complies with the nondiscriminatory requirements of state and federal law and should be incorporated in the Agreement language. In the opinion of the Panel, only if a cost basis can be advanced to justify different prices for the same service thereby avoiding a discriminatory rate.

ISSUE 55

Whether certain miscellaneous Agreement provisions concerning disputes should be adopted or rejected?

DECISION:

The Panel finds that the following miscellaneous provisions should be adopted or rejected.

Schedule 2.2: ¶2. Reject AT&T's proposed language.

- ¶ 5 Reject Ameritech's proposed language in first sentence.
- ¶ 5 Adopt AT&T's proposed language in last sentence.
- Section 12.8.5 Delete AT&T's proposed language.
- Section 12.12.2(d) Adopt Ameritech's proposed language.
- Section 12.12.2(j) Adopt AT&T's proposed language.
- Section 12.12.3(e) Adopt AT&T's proposed language.
- Section 12.12.3(f) Adopt AT&T's proposed language.
- Section 16.3.1 Adopt AT&T's proposed language.
- Section 16.6 Adopt AT&T's proposed language.
- Section 16.11 Adopt AT&T's proposed language.
- Section 16.13 Adopt AT&T's proposed language.
- Section 16.15 Reject AT&T's proposed language.
- Section 16.20.2 Adopt Ameritech's proposed language.
- Schedule 1.2 Include proposed definition for Arbitrator.
- Reject proposed definitions for CABS, Capacity, Conduit, Dispute Resolution Process, Permanent Number Portability.
- Schedule 9.2.3 Adopt AT&T's proposed language at #2.5.
- Schedule 10.11.1 Reject AT&T's proposed language at #8.

REASONS FOR DECISION:

There is little or no evidence on record concerning these Agreement language disputes and/or the matters are of minimal impact. In keeping with the Commission's arbitration procedure established in Case No. U-11134, the Panel will limit its decision on the above matters to selecting

the position of one of the parties. The decision concerning which Agreement language should be adopted in this Interconnection Agreement is based on what is reasonable, pro-competitive, and consistent with the Act, the FCC Order and the MTA.

IV.

CONCLUSION AND RECOMMENDATION

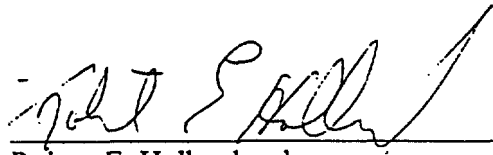
The Arbitration Panel has, to the best of its knowledge, addressed all disputed issues between the parties which have been submitted to the Panel. Although the Panel acknowledges that AT&T and Ameritech have resolved many of the issues originally submitted to the Panel, the Panel notes at least 80 differences between the parties in the Double Red-lined Version of the proposed Interconnection Agreement submitted jointly by the parties and dated October 1, 1996. In addition, there are over 60 differences between the parties on the attached Schedules to this October 1, 1996 Interconnection Agreement. Any possible remaining differences in language in the October 1 Interconnection Agreement and attached Schedules should be considered to be mere differences in language rather than disagreement over disputed issues. Therefore, any such differences should be considered to be resolved in accordance with the Panel's decisions concerning the disputed issues in this Decision of the Arbitration Panel.


The Panel concludes that its resolution of the disputed issues in this Decision of the Arbitration Panel comports with the provisions of the Act, the MTA, FCC orders and the appropriate federal rules. The Panel therefore recommends that the Commission approve the Interconnection

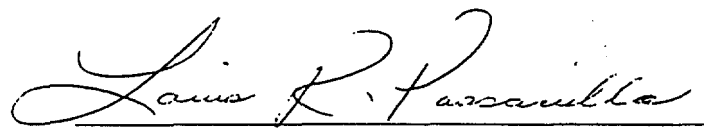
Agreement which is to be subsequently submitted by Ameritech and AT&T in accordance with this

Decision of the Arbitration Panel.

THE ARBITRATION PANEL


Robert E. Hollenshead


Ann R. Schneidewind


Louis R. Passariello



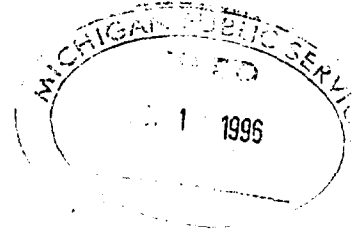
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STEPHEN J. VIDETO

November 14, 1996

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909



Re: TCG Detroit Petition For Arbitration
MPSC Case No. U-11138

Dear Ms. Wideman:

Pursuant to the Commission's November 1, 1996 Order in this case, the parties were instructed to file a complete copy of the interconnection agreement within ten days of the Commission's Order. Ever since the arbitration panel issued its decision on October 3, 1996, TCG Detroit and Ameritech have continued to negotiate the final version of language to be used for the interconnection agreement. As of last Friday, November 8, TCG Detroit and Ameritech had entered into a firm agreement on all but two terms of the interconnection document, and agreed to a process for a joint submission of that document to the Commission.

With the holiday on Monday, November 11, the date for filing of the complete copy of the interconnection agreement was Tuesday, November 12, 1996. Ameritech received TCG Detroit's signed copy of the interconnection agreement on Monday, and was to file the agreement with the Commission.

At approximately 11:30 AM Central Time (12:30 in Michigan) Tuesday, November 12, 1996, however, Ameritech informed TCG that Ameritech would not abide by its Friday agreement on the method of a joint submission, and refused to make a joint filing. Since only Ameritech's Chicago counsel had the latest version of the negotiated interconnection agreement, TCG made its best efforts to obtain a copy of the negotiated interconnection agreement, indicate the last area of dispute, and transmit the agreement to Michigan counsel for filing. Despite those best efforts, there simply was not enough time left in the day to complete the task. Ameritech did not make the computer disk available until 4:00 PM Eastern Standard Time. Therefore, TCG Detroit was unable to make any filing on Tuesday.

Ms. Dorothy Wideman
November 14, 1996
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TCG Detroit was prepared to make a filing on Wednesday, November 13, 1996 which included a complete copy of both the interconnection agreement and the E911 agreement, with the areas of disagreement plainly marked. However, based upon our conversation Wednesday afternoon with Mr. Celio about this filing, we will not re-file entire copies of those agreements. Instead, we have simply enclosed with this letter copies of the two pages containing the disputed provisions, modified to reflect the position of TCG Detroit on these two disputed issues. Pursuant to Commission filing requirements, fifteen copies of this letter and the disputed pages are also being filed.

As indicated above, the parties have concluded all disputed issues but two. One issue is contained in paragraph 29.6 of the interconnection agreement, entitled "Governing Law." TCG Detroit's concern is that the language as written by Ameritech has the effect of removing or waiving the jurisdiction of this Commission, or at least certain rights of TCG Detroit under the Michigan Telecommunications Act in situations where there is an argument that a dispute falls under the concurrent jurisdiction of this Commission and the FCC. The enclosed filing by TCG Detroit therefore highlights the disputed portion, indicates TCG Detroit's disagreement with Ameritech's submission, and seeks Commission guidance on final language for this paragraph. The other issue is Paragraph 6 of Ameritech's 911 Agreement.

At the same time that Ameritech reneged on its agreement to file a joint submission, Ameritech also made an eleventh hour demand that an agreement for enhanced 911 services be attached to and incorporated as part of the interconnection agreement. Although the interconnection agreement originally proposed by Ameritech and approved by the Commission did not provide for an E911 agreement to be incorporated as part of the interconnection agreement, TCG Detroit nonetheless attempted to reach a final understanding with Ameritech on the terms of an E911 agreement so that one could be submitted as an attachment to the interconnection agreement. Unfortunately, those efforts also failed, as there also remains one issue of dispute between the parties regarding the language to be used in the E911 agreement. That dispute appears at paragraph 6.9 of Ameritech's version of the E911 agreement, which is a provision by which Ameritech disclaims any and all liability to any person regarding attempts to use 911 service.

As to both the "governing law" issue under the interconnection agreement and the liability issue under the E911 agreement, TCG Detroit hopes to continue to negotiate with Ameritech and reach a final resolution which is acceptable to both parties. In the absence of an agreement, however, TCG Detroit would welcome Commission guidance on these issues. Furthermore, TCG Detroit would also be amenable to Commission supervised mediation of these two outstanding language disputes.

Ms. Dorothy Wideman
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Thank you for your attention to this matter. Should you have any questions regarding this material, please contact us at your convenience.

Very truly yours,

CLARK HILL P.L.C.



Stephen J. Videto

SJV/cdm

Enclosures

cc: Counsel for Ameritech
TCG Detroit

29.6 **Governing Law.** For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this The Parties agree on a portion of the language in this Section, as follows: "This Agreement shall be governed by the applicable federal law and by the domestic laws of the State of Michigan without reference to conflict of law provisions". The Parties do not agree on additional language for this Section. On or before November 14, 1996, each Party shall submit to the Commission its version of the remaining language for this Section. The language approved by the Commission shall be set forth in an amendment hereto, subject to each Party's right to appeal.

29.8 Non-Assignment. Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

29.10 Disputed Amounts

misconduct), whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

- 6.7 Neither party shall have any liability whatsoever to or through the other for any indirect, special, or consequential damages, including, but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder, even if the other party has been advised of the possibility of such damages.
- 6.8 Ameritech is not liable for the accuracy and content of CNA data Exchange Carrier delivers to Ameritech. Rather, Exchange Carrier is responsible for the accuracy and content of such data and Ameritech is the custodian of such data and is responsible for maintaining the accuracy and content of that data as delivered.
- 6.9 ~~Notwithstanding Ameritech's agreement to indemnify contained herein, under no circumstances shall Ameritech incur any liability, direct or indirect, to any Person who dials or attempts to dial, the digits "9-1-1" or to any other Person on whose behalf a 9-1-1 call is made. On or before November 30, 1996, the Parties shall submit to the Commission an agreed upon provision establishing requirements relating to creating limitations of liability in TCG's tariffs and contracts. In the absence of such agreement, each Party shall submit to the Commission its version of the appropriate language.~~
- 6.10 These remedies shall be exclusive of all other remedies against Ameritech or Exchange Carrier, their affiliates, subsidiaries or parent corporation (including their directors, officers, employees or agents).

7.0 Record Retention

Except as otherwise required by law or agreed to in writing, each Party shall maintain all books, records, contracts, instruments, data and other documents, including all accounting records, and any other information that may be stored on any computer medium (collectively, the "Records"), relating to the performance of its obligations under this Agreement for a period which shall be the greater of: (i) twelve (12) months, (except for mechanized records which shall be kept for two (2) months) or (ii) each party's existing corporate records

